Filed 4/27/15 P. v. Alvarado CA2/8

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

| | |
|---|---|
| THE PEOPLE,<br><br>Plaintiff and Respondent,<br><br>v.<br><br>VERONICA ALVARADO,<br><br>Defendant and Appellant. | B254210<br><br>(Los Angeles County<br>Super. Ct. No. VA128497) |

APPEAL from a judgment of the Superior Court of Los Angeles County, Robert J. Higa, Judge. Affirmed.

Kenneth J. Sargoy, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Scott A. Taryle and Pamela C. Hamanaka, Deputy Attorneys General, for Plaintiff and Respondent.

* * * * * *

Defendant Veronica Alvarado was charged with and convicted of one count of unlawfully driving or taking a vehicle in violation of Vehicle Code section 10851 (section 10851), subdivision (a). On appeal, we reject defendant's arguments that as a matter of law the court should have granted her motion to dismiss for lack of substantial evidence and that the trial court was required to sua sponte instruct jurors on mistake of fact and claim of right. Because defendant fails to demonstrate any error, we affirm.

## FACTS AND PROCEDURE

Beginning on December 4, 2012, when her car was being repaired, defendant rented three cars successively from Enterprise Rent-A-Car (Enterprise) in Whittier. The third car was a 2012 Fiat, which defendant started renting on December 8 or 9, 2012. There was evidence that defendant was responsible only for the insurance payments, and the repair shop would pay the rental fee until her car was finished, which generally required three days to one week. The paperwork from Enterprise indicated that the repair shop should be billed; the duration of their obligation was not indicated; but nothing in the contract limited the repair shop's obligation. There was no evidence that defendant was told the shop would pay the rental fee only for a few days. Eventually, both defendant and the repair shop were billed for the rental between December 4 and December 21.

Enterprise has procedures for car rentals. A customer is required to show "fundability" meaning that a customer would need to deposit money. If the customer wanted to extend the rental, the customer would be required to deposit additional funds. Here, defendant provided a credit card to cover only the insurance payments as the repair shop at least initially was covering the charges for the vehicle rental. When she rented the first vehicle on December 4, 2012, Enterprise charged one hundred dollars to defendant's credit card.

Enterprise personnel estimated that the Fiat would be returned on December 14, 2012. But the return date was not certain as it depended on the length of time it took to repair defendant's car. The contract did not specify a return date.

On December 14, defendant owed money on the Fiat. At that time, the assistant manager of the Whittier Enterprise Richard Villa contacted the repair shop to find out if defendant's vehicle had been repaired. According to Villa, Enterprise ended defendant's permissible use of the vehicle on December 14.

The branch manager Darrell Ballard testified that on December 14 defendant was no longer authorized to keep the vehicle. He called defendant numerous times to inform her that her permissible use of the vehicle expired. She was called in excess of 20 times. One or two times Ballard was able to reach defendant and told her she needed to return the car to which she replied that she was at work and would return it as soon as possible. Ballard did not remember the date he spoke to defendant. In contrast to his testimony that he spoke to defendant, Ballard also testified that he closed the account on December 21 because he was unable to contact defendant. He further testified that he took the required course of action because he did not reach defendant.

Defendant did not return the car. On December 21, 2012, Enterprise mailed defendant a demand letter asking her to return the vehicle. Ballard also left her a voicemail indicating that the demand letter had been sent and she no longer had Enterprise's permission to use the vehicle.

On January 3, 2013, Ballard reported the car stolen. Detective Jose Bolanos investigated the stolen vehicle report. Detective Bolanos tried to contact defendant three or four times to ask her about the Fiat. On January 15, he received a message from defendant stating that she had returned the car to an Enterprise in Rowland Heights.

A few months later, Officer Matthew Balzano conducted a traffic stop of a vehicle in which defendant was the passenger. Defendant initially gave him a false name. When defendant eventually provided her correct name, Officer Balzano arrested her.

Defendant testified in her defense. According to her, she took her car to the repair shop sometime in November 2012. She went to Enterprise on December 3, 2012. She did not rent a car on the 3rd because no credit was left on her credit card. She returned the next day with a different credit card. Defendant understood the repair shop would pay for the rental and she was responsible for paying for the insurance.

Defendant left the country on December 12, 2012, and did not receive voicemails. She returned January 7, 2013. She was in Mexico to allow her daughter to visit with her daughter's father. Defendant left the rental Fiat in a senior complex where her friend lived.

As soon as she returned from Mexico, defendant turned on her phone and received a call from Detective Bolanos. She informed Detective Bolanos that her car was not ready yet. She also told him where the Fiat was located, and he said that he would retrieve the car. After a few days when the police did not retrieve the vehicle, defendant took it to an Enterprise in Rowland Heights. Defendant called Detective Bolanos and informed him that she had returned the car. According to defendant, after she returned the vehicle she received the demand letter from Enterprise.

Defendant testified that she did not return the vehicle before she went to Mexico because her car was not ready. She did not receive phone calls from Enterprise while she was in Mexico. She did not talk to anyone from Enterprise or tell anyone that she was at work.

Defendant's Penal Code section 1118.1 motion to dismiss was denied. Defendant argued that there was no evidence she had an obligation to return the vehicle. The court indicated that Enterprise's paperwork was insufficient to show that defendant was obligated to return the vehicle but Enterprise contacted her and notified her that she needed to return the car.

Jurors were instructed that to find a violation of section 10851, they were required to find: "One, a person took or drove a vehicle belonging to another person; [¶] Two, the other person had not consented to the taking or driving of his or her vehicle. [¶] And three, when the person took or drove the vehicle, he or she had the specific intent to deprive the owner either permanently or temporarily of his or her title to or possession of the vehicle."

During closing argument, the prosecutor emphasized that defendant told Ballard she would return the car. The prosecutor argued that defendant failed to return the car after the permissive use ended. The prosecutor questioned defendant's credibility with

respect to the Mexico trip, arguing that it is unreasonable to rent a car and then leave the country.

Defense counsel argued that defendant's failure to return the Fiat was a mistake or confusion not a crime. Counsel argued that Enterprise understood the permissive use ended but defendant did not have that understanding. She was not told of a date by which she had to return the vehicle.

Jurors asked to rehear Ballard's testimony regarding when he spoke to defendant about returning the vehicle. Jurors also asked to rehear defendant's testimony regarding when she first received notification that the car "was to be returned."

Jurors convicted defendant of one count of unlawfully driving or taking a vehicle. The imposition of sentence was suspended and defendant was placed on probation for three years.

## DISCUSSION

### *1. Penal Code Section 1118.1 Motion*

Defendant argues that the trial court was required to dismiss the charge for unlawfully driving or taking a vehicle because there was no evidence of lack of consent necessary to prove the unlawful taking or driving a vehicle. Defendant argues that she had the right to possess the vehicle until the repairs on her car had been completed.

To support a conviction for violation of section 10851, the prosecution must show (1) defendant took another person's vehicle (2) without the owner's consent and (3) with the specific intent to permanently or temporarily deprive the owner of title or possession. (*People v. O'Dell* (2007) 153 Cal.App.4th 1569, 1574.) Continuing to drive a rental vehicle beyond a rental period may constitute a violation of section 10851. (*People v. Carr* (1964) 229 Cal.App.2d 74, 78.)

In *De Mond v. Superior Court* (1962) 57 Cal.2d 340, our Supreme Court held there was sufficient evidence to warrant trial on violation of section 10851 when the evidence interpreted in the light favorable to the prosecution showed the defendant rented a car and then continued driving the car beyond the rental period. (*Id*. at p. 344.) Although the defendant testified that he had called the rental agency and received

permission to continue renting it, the high court concluded the magistrate was not required to credit that evidence. (*Id*. at p. 345.)

Similarly here, interpreting the evidence in the light favorable to the prosecution there was evidence that defendant continued to drive the Fiat beyond the rental period. Ballard spoke to defendant and told her that the car needed to be returned. Defendant replied that she would return it as soon as possible. But she not return the vehicle. This evidence supported the inference that defendant knew she did not have Enterprise's consent to continue using the vehicle. Jurors could have credited Ballard's testimony that he spoke to defendant and informed her that she was required to return the vehicle. Defendant therefore failed to show that as a matter of law the trial court was required to dismiss the charge.

***2. The Court Did Not Have a Sua Sponte Duty to Instruct on Mistake of Fact or Claim of Right***

Defense counsel did not request an instruction on mistake of fact or claim of right. Defendant argues the court was required to sua sponte instruct jurors on these defenses. She argues there was evidence to support the inference that she acted with a subjective belief that she had a lawful claim to the property. She claims she honestly believed that she had the right to retain possession of the vehicle. She argues these defenses negate the required specific intent for the charged offense.

A person who committed a crime "under an ignorance or mistake of fact, which disproves any criminal intent" is incapable of committing a crime. (Pen. Code, § 26.) If the defendant had an honest and reasonable belief in the existence of circumstances, which, if true, would make the act an innocent act, the mistake of fact defense applies. (*People v. Lucero* (1988) 203 Cal.App.3d 1011, 1016–1017.) A mistake of fact occurs when a person understands the facts to be other than what they are. For a general intent

crime, the mistake of fact must be actual and reasonable; for a specific intent crime it must be actual.[1] (*People v. Lawson* (2013) 215 Cal.App.4th 108, 115.)

Applying these principles, an appellate court found a "mistake" as to intent when the defendant took a motor bike and commanded a truck after he had been involuntarily drugged. (*People v. Scott* (1983) 146 Cal.App.3d 823, 828.) At the time he committed these acts, the defendant believed he was from the FBI and CIA. (*Ibid*.) Defendant believed someone was trying to kill the President. (*Id*. at p. 829.) He attempted to take the vehicles "to save his own life or possibly that of the President." (*Id*. at p. 831.) The appellate court reversed the conviction for unlawfully taking a vehicle, finding that the defendant was operating under a mistake and did not form the requisite intent. (*Id*. at p. 832.)

"The claim-of-right defense provides that a defendant's good faith belief, even if mistakenly held, that he has a right or claim to property he takes from another negates the felonious intent necessary for conviction of theft or robbery." (*People v. Tufunga* (1999) 21 Cal.4th 935, 938.) """Although an intent to steal may ordinarily be inferred when one person takes the property of another, particularly if he [or she] takes it by force, proof of the existence of a state of mind incompatible with an intent to steal precludes a finding of either theft or robbery. It has long been the rule . . . that a bona fide belief, even though mistakenly held, that one has a right or claim to the property negates felonious intent. [Citations.] A belief that the property taken belongs to the taker [citations], or that he [or she] had a right to retake goods sold [citation] is sufficient to preclude felonious intent. Felonious intent exists only if the actor intends to take the property of another without believing in good faith that he [or she] has a right or claim to it."""" (*Id*. at p. 943.) For purposes of this appeal, we assume the claim-of-right defense may apply to an unlawful

---

[1] CALJIC No. 4.35 provides: "An act committed or an omission made in ignorance or by reason of a mistake of fact which disproves any criminal intent is not a crime. [¶] Thus a person is not guilty of a crime if [he] [she] commits an act or omits to act under an actual [and reasonable] belief in the existence of certain facts and circumstances which, if true, would make the act or omission lawful."

taking or driving charge even though a violation of section 10851 is not necessarily a theft because it could involve only unlawful driving. (*People v. Garza* (2005) 35 Cal.4th 866, 871.)[2]

Generally, a trial court has a sua sponte duty to instruct on principles of law that are closely and openly connected to the facts and necessary to the jury's understanding of the case. (*People v. Montoya* (1994) 7 Cal.4th 1027, 1047.) A trial court has no sua sponte duty to instruct on accident when the defendant's theory of accident "is an attempt to negate the intent element of the charged crime." (*People v. Anderson* (2011) 51 Cal.4th 989, 992.) "[A]ssuming the jury received complete and accurate instructions on the requisite mental element of the offense, the obligation of the trial court . . . to instruct on accident extended no further than to provide an appropriate pinpoint instruction upon request by the defense." (*Id*. at p. 998.)

Here defendant argues her defenses of mistake of fact and claim of right negate the required specific intent for the charged offense. Accordingly, the trial court was not required to sua sponte instruct the jury on those defenses. Appellant's reliance on *People*

---

**2** CALCRIM No. 1863 provides: "If the defendant obtained property under a claim of right, (he/she) did not have the intent required for the crime of (theft/ [or] robbery). [¶] The defendant obtained property under a claim of right if (he/she) believed in good faith that (he/she) had a right to the specific property or a specific amount of money, and (he/she) openly took it. [¶] In deciding whether the defendant believed that (he/she) had a right to the property and whether (he/she) held that belief in good faith, consider all the facts known to (him/her) at the time (he/she) obtained the property, along with all the other evidence in the case. The defendant may hold a belief in good faith even if the belief is mistaken or unreasonable. But if the defendant was aware of facts that made that belief completely unreasonable, you may conclude that the belief was not held in good faith. [¶] [The claim-of-right defense does not apply if the defendant attempted to conceal the taking at the time it occurred or after the taking was discovered.] [¶] [The claim-of-right defense does not apply to offset or pay claims against the property owner of an undetermined or disputed amount.] [¶] [The claim-of-right defense does not apply if the claim arose from an activity commonly known to be illegal or known by the defendant to be illegal.] [¶] If you have a reasonable doubt about whether the defendant had the intent required for (theft/ [or] robbery), you must find (him/her) not guilty of _____ < *insert specific theft crime* >."

*v. Russell* (2006) 144 Cal.App.4th 1415, 1431, for the proposition that the trial court was required to instruct sua sponte is misplaced because it was overruled on that ground in *Anderson, supra*, 51 Cal.4th at p. 992.) (See *People v. Lawson, supra*, 215 Cal.App.4th at p. 119 [*Anderson* overruled *Russell*'s holding that the trial court had a duty to sua sponte instruct on claim of right and mistake of fact].) Defendant fails to show the trial court erred in not sua sponte instructing jurors on mistake of fact or claim of right.

**DISPOSITION**

The judgment is affirmed.

FLIER, J.

WE CONCUR:

BIGELOW, P. J.

GRIMES, J.